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IN THE

Supreme Court of the United States

October Term, 1965

No. 1312 1324

IN THE MATTER

OF

SAMUEL S. FRANK,

Petitioner,

AGAINST

THE BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD DEPARTMENT

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Petitioner prays that a writ of certiorari issue to review the order of the Appellate Division of the Supreme Court of the State of New York, Third Department, dated and entered December 15, 1965, confirming a determination of the Board of Regents of the State of New York, suspending petitioner's license to practice medicine for a period of one year.

Opinions Below

The *per curiam* opinion of the Appellate Division of the Supreme Court of the State of New York, Third De-

partment on the application to review the determination of the Board of Regents suspending the petitioner's license to practice medicine for one year is reported in 24 A. D. 2d 909; 264 N. Y. Supp. 2d 413, and is printed at pages 33-34 of the record on the application for leave to appeal to the Court of Appeals of the State of New York, and is set forth in full in Appendix A.

The order of the Appellate Division of the Supreme Court of the State of New York, Third Department, confirming the determination of the Board of Regents suspending the petitioner's license to practice medicine for one year, dated and entered December 15, 1965, is printed at pages 9-10 of the record on the application for leave to appeal to the Court of Appeals of the State of New York.

The order of the Appellate Division of the Supreme Court of the State of New York, Third Department, dated January 5, 1966, denying petitioner's application for leave to appeal to the Court of Appeals, is printed at pages 11-12 of the record on the application for leave to appeal to the Court of Appeals of the State of New York. No opinion was rendered.

The order of the Court of Appeals of the State of New York, dated February 24, 1966, on petitioner's application for leave to appeal to that Court, is submitted as part of the record certified by the Clerk of the Court of Appeals. No opinion was rendered.

The order of the Court of Appeals of the State of New York, dated March 31, 1966, on plaintiff's application for reargument of his motion for leave to appeal to that Court is submitted as part of the record certified by the Clerk of the Court of Appeals. No opinion was rendered.

Jurisdiction

The jurisdiction of this Court is invoked under 28 U. S. C. 1257(3) since state action was drawn into question on the ground of its being repugnant to the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States.

Questions Presented

1) Whether a Coordinating Committee on Discipline, appointed by order of the Appellate Division of the Supreme Court of the State of New York, for the purpose of conducting an examination and study of the statements of retainer and closing statements filed with that Court and specifically authorized to consider and, where necessary, correct the professional conduct of attorneys and those employed by them or associated with them in any manner whatever in representing plaintiffs or defendants, or indemnitors, insurers, subrogors or subrogees in those actions in which statements of retainer were required to be filed by the Rules of said Court, could elicit testimony from petitioner subpoenaed to appear before such Committee in a specific matter bearing the title of a specific attorney then under investigation, with respect to medical services rendered by petitioner to clients of said attorney, without first apprising the petitioner that the investigation was in part directed against him, and whether failing to take such course, the petitioner was thereby deprived of rights guaranteed to him under the Sixth and Fourteenth Amendments of the Federal Constitution.

2) Whether, under the circumstances set forth in item "1" above, and particularly in the light of the fact that

the petitioner attended the hearing of the Committee on May 17, 1960, without counsel, it was incumbent upon the Committee, before eliciting testimony from the petitioner, to advise him of his right to invoke the protection afforded to him by the Fifth Amendment to the Federal Constitution, and failing to take such action, whether the petitioner's constitutional rights were thereby abridged and interfered with.

3. Whether, under the circumstances set forth in item "1" above, and in view of the fact that the petitioner attended the hearing of the Committee on May 17, 1960, without counsel, it was incumbent upon the Committee, upon the petitioner's request to have the assistance of counsel in view of the line of questioning put to him, to suspend the further questioning of the petitioner to give him an opportunity to obtain such counsel, and failing to take such action, whether the petitioner's constitutional rights were thereby abridged and interfered with.

4. Whether, under the circumstances set forth in items "1", "2" and "3" above, the testimony elicited from the petitioner at the hearing held on May 17, 1960, when he was not represented by counsel, when he had voiced an objection to the nature of the questioning to which he was being subjected because he had not been apprised that the hearing was directed, in part, against him, when he requested an opportunity to have counsel, but the hearing continued irrespective of such request, and when he was not advised of his privilege against self-incrimination, could thereafter be offered in evidence against him over objection in the proceeding to revoke his license.

Constitutional Provisions and Statutes Involved and Court Order Creating, Empowering and Authorizing the Investigation Attended by Petitioner

UNITED STATES CONSTITUTION

Amendment V

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forcees, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Amendment VI

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence."

Amendment XIV—Section 1

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are

citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

UNITED STATES CODE

Title 28, Section 1257

"1257. State courts; appeal; certiorari

Final judgment or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

* * * * *

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929."

EDUCATION LAW OF THE STATE OF NEW YORK

Section 6514—Revocation of certificates; annulment of registrations

* * * * *

"2. The license or registration of a practitioner of medicine, osteopathy or physiotherapy may be

revoked, suspended or annulled or such practitioner reprimanded or disciplined in accordance with the provisions and procedure of this article upon decision after due hearing in any of the following cases:

(a) That a physician, osteopath or physiotherapist is guilty of fraud or deceit in the practice of medicine, osteopathy or physiotherapy or in his admission to the practice of medicine, osteopathy or physiotherapy; or

* * * * *

(g) That a physician is or has been guilty of unprofessional conduct. The regents shall have power to promulgate rules to give effect to this section."

PENAL LAW OF THE STATE OF NEW YORK

Section 1202—Presenting false proofs of loss in support of claim upon policy of insurance

"A person who knowing it to be such:

1. Presents, or causes to be presented, a false or fraudulent claim, or any proof in support of such a claim, for the payment of a loss upon a contract of insurance; or

2. Prepares, makes or subscribes a false or fraudulent account, certificate, affidavit or proof of loss, or other document or writing, with intent that the same may be presented or used in support of such a claim,

Is punishable by imprisonment for not more than five years, or by a fine of not more than five hun-

dred dollars, or by both such fine and imprisonment."

ORDER OF THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST JUDICIAL DEPARTMENT, DATED FEBRUARY 3, 1959

The text of this order is set forth in full in Appendix B.

Statement

The questions here presented for review were raised in the first instance and in the appellate courts of the State of New York in the following manner: petitioner himself voiced an objection to the line of inquiry to which he was being subjected, at a time when he was not represented by counsel, pointing out that he was not apprised of any charges being directed against him and that he was under the impression that the hearing was being conducted for the purpose of inquiry into the practice of an attorney, William B. Gladstone (*R. 75, 76, 78, 79). Notwithstanding this objection on the part of petitioner, the interrogation of petitioner continued (R. 76) and was only later suspended when petitioner again renewed the request to have counsel represent him (R. 79). The testimony elicited from the petitioner was later offered in evidence in a proceeding to revoke the petitioner's license to practice medicine and was received in evidence in this proceeding over the objection of petitioner's counsel (R. 49, 64, 66, 67). On petitioner's application to the Court of Appeals for leave to reargue his application for leave to appeal to that Court, peti-

* R. refers to the page of the certified record of the Appellate Division of the Supreme Court, State of New York.

tioner referred specifically to the deprivation of his rights, protection, privileges and immunities afforded to him by the Federal Constitution and arising out of the events which transpired at the hearing held on May 17, 1960 when he was not represented by counsel (petitioner's affidavit in support of the motion to the Court of Appeals for leave to reargue, part of record certified by the Clerk of the Court of Appeals).

At a hearing of the Coordinating Committee on Discipline of various Bar associations in the City of New York, created by order * of the Appellate Division of the Supreme Court of the State of New York dated February 3, 1959, and authorized to make an investigation and "where necessary correct the professional conduct of attorneys and those employed by them or associated with them in any manner whatever" in the handling of accident cases (R. 68-69), petitioner attended pursuant to subpoena served upon him by said Committee (which it was authorized to issue) on May 17, 1960, without counsel representing him.

The subpoena served on the petitioner indicated on its face that the petitioner was subpoenaed to the hearing for the purpose of giving evidence in a "Preliminary investigation of Practices of Attorneys in Personal Injury Claims, now being conducted pursuant to the order of the Appellate Division of the Supreme Court of the State of New York in and for the First Judicial Department." Petitioner had no way of knowing from the subpoena served upon him, and the record indicates that at the commencement of the hearing at its first session on May 17, 1960, when petitioner presented himself without counsel, he was not advised, that the hearing was in-

* The text of the Order is set forth in Appendix B.

tended for the purpose of conducting an investigation into petitioner's conduct and his association with the attorney, William B. Gladstone, then under investigation. At this hearing, petitioner objected to the questions being put to him as to medical services that he had rendered to certain people who had been represented by the attorney, William B. Gladstone, then under investigation by the said Committee, on the ground that the petitioner believed that the purpose of the hearing was to investigate the practice of lawyers, whereas the line of questioning put to him indicated that he, the petitioner, was being investigated, and further, that if the purpose of the hearing was to investigate the activities of the petitioner, then he wished to be excused in order to obtain the benefit of legal assistance. Notwithstanding this statement by the petitioner, the hearing continued and questions were put to the petitioner by his inquisitor as to services rendered by him to the people represented by the attorney under investigation, and the charges made by petitioner therefor. After this questioning continued for a time, it appeared that after conversation between petitioner and his inquisitor, a statement was put on the record to the effect that petitioner would rather be represented by counsel if the Committee wished to pursue the questioning to which he was being subjected, and, thereupon, the hearing was adjourned to June 7, 1960, at which time the petitioner returned, but accompanied by counsel.

To the extent that the Coordinating Committee of the Bar Association subjected the petitioner, on May 17, 1960, to a line of questioning as to the nature and extent of medical treatment which petitioner rendered to clients of the attorney then under investigation, and the charges made by petitioner for such medical treatment, and his

method of record keeping with respect to treatment and charges (R. 68-80), the inquiry as to petitioner's activities had a direct bearing on whether petitioner was guilty of a violation of Section 1202 of the Penal Law of the State of New York. That Section made it a crime punishable by imprisonment of not more than five years or a fine of not more than $500, or by both, for a person to present or cause to be presented a false or fraudulent claim to obtain the payment of a loss upon a contract of insurance or to prepare, make or subscribe a false or fraudulent account or proof of loss or other document in writing used in support of such a plan.

Notwithstanding the fact that testimony elicited from petitioner by the investigating committee on May 17, 1960 bore directly on whether or not petitioner was guilty of a crime, at no point during this hearing on May 17, 1960, attended by petitioner without counsel, was petitioner advised by his inquisitor of the danger in which petitioner personally stood, nor of his right to refuse to answer the questions being put to him on the ground that they might tend to incriminate him.

Petitioner was thereafter charged with a violation of Section 6514, subdivision 2(a) and (g) of the Education Law of the State of New York and the first specification enumerated in support of the charge made under Section 6514, subdivision 2(a) of the Education Law of the State of New York was to the effect that the petitioner had submitted false and fraudulent bills, in that he misrepresented and misstated the dates on which the treatments had been given and misstated the amount of money he received in payment (R. 57-58).

The charges made against the petitioner by the Board of Regents under Section 6514, subdivision 2(a) of the Education Law of the State of New York were identical

in substance with the deeds and actions declared to be a crime under Section 1202 of the Penal Law. If the petitioner was guilty of the specifications asserted against him under the Education Law, then he was equally guilty of a violation of the Penal Law.

The testimony elicited from the petitioner at the hearing on May 17, 1960, before the Coordinating Committee of the Bar Association, was thereafter made part of the record in support of the charges pursuant to Section 6514, subdivisions 2(a) and (g) of the Education Law of the State of New York, made against petitioner by the Board of Regents of the State of New York (R. 67-80). This testimony formed a principal basis for the argument made by the respondent to the Appellate Division of the Supreme Court, Third Department, in its brief to that Court, where respondent stated, at page 4 thereof:

> "Also relevant to these findings (by the Board of Regents) are disclosures made by the petitioner at the judicial inquiry. For example, he was asked about his medical charges. (The testimony given by petitioner on May 17, 1960, appearing at page 75 of the record certified by the Clerk of the Appellate Division of the Supreme Court, Third Department.)"

Reasons for Granting the Writ

1. The eliciting of testimony from petitioner on the opening day of the hearing held before the Coordinating Committee of the Bar Association, attended by petitioner pursuant to subpoena, without the benefit of counsel representing him, was a violation of petitioner's rights under the Sixth and Fourteenth Amendments to the Federal Constitution. The scope and extent of the inquiry

then being made was, under the order creating and constituting the Committee making the inquiry, one which extended to attorneys "and those employed by them or associated with them in any manner whatever", and therefore, included the petitioner. The Committee was authorized, under the order constituting and creating them, to take action for the purpose of correcting the professional conduct of attorneys "and those employed by them or associated with them in any manner." This, too, included the petitioner. At the outset of this hearing, petitioner was entitled to be fully apprised by his inquisitor, particularly where, as here, the petitioner urged numerous objections to the pertinency of the questions being put to him (R. 70, 71, 72, 75), concerning the subject under inquiry and the manner in which the propounded questions were pertinent so far as petitioner was concerned. Such explanation should have been given to the petitioner in a meaningful manner so that the petitioner could be made to understand the scope of the inquiry and his connection therewith. Stating the matter otherwise, the proper course which should have been followed, if petitioner's rights under the Sixth and Fourteenth Amendments were to be safeguarded, was that suggested by Mr. Chief Justice Warren in *Watkins* v. *United States,* 354 U. S. 178 (1957), where the learned Chief Justice stated, at pages 214-215:

> "Unless the subject matter has been made to appear with undisputable clarity, it is the duty of the investigative body, upon objection of the witness on grounds of pertinency, to state for the record the subject under inquiry at that time and the manner in which the propounded questions are pertinent thereto. To be meaningful, the explanation must describe what the topic under inquiry is

and the connective reasoning whereby the precise questions asked relate to it."

2. Petitioner attended the hearing before the Coordinating Committee of the Bar Association on May 17, 1960, as a compelled witness. He came without counsel. His interrogation was conducted by Chief Counsel to the Committee and Assistant Counsel to the Committee (R. 68-80). The members of the Committee were lawyers (R. 68). Notwithstanding petitioner's objection that he wished to be excused so that he could engage counsel to protect his interests (R. 75, 76), the hearing continued and petitioner was subjected to further questions (R. 75-79), until finally, the Chairman of the Committee permitted the hearing to be adjourned so that petitioner could obtain counsel (R. 79). Inasmuch as the Committee had indicated that the scope of their investigation went beyond lawyers only (R. 71), and that the inquiry was being focused on petitioner's history and background and his status as a physician, which the Committee felt was pertinent to the investigation (R. 71, 72), the petitioner should have been advised by the Committee and its counsel that the petitioner was entitled to counsel, and the interrogation of petitioner should have ceased at that point and should not have continued until he had had an opportunity to obtain counsel. *Escobedo* v. *Illinois*, 378 U. S. 478 (1964).

3. If the decision of this Court in *In re Groban*, 352 U. S. 330 (1957), is authoritative for the proposition that petitioner did not have the right to counsel before his interrogation could proceed before the Coordinating Committee of the Bar Association, then petitioner, as a compelled witness, was entitled to be advised by his inquisitors that, absent counsel representing him, he could in-

voke his constitutional privilege against self-incrimination, which privilege is guaranteed to him under the Fourteenth Amendment. *Malloy* v. *Hogan*, 378 U. S. 1 (1964).

Mr. Justce Reed, writing for the Court in the *Groban* case, stated at page 333 that "until then (the time when a witness can properly demand presence of counsel) his protection is the privilege against self-incrimination * * *. This is a privilege available in investigations as well as in prosecutions."

Mr. Justice Frankfurter wrote a concurring opinion in the *Groban* case, in which he stated, at page 336:

> "If the Ohio legislation were directed explicitly or by obvious design toward secret inquisition of those suspected of arson, we would have a wholly different situation from the one before us."

The instant case presents the very situation which Mr. Justice Frankfurter believed would cause the Court to reach a conclusion different from that in *Groban*. Here, the Appellate Division order was directed explicitly and by obvious design toward the inquisition and discovery of those suspected of improper conduct in the handling of certain lawsuits.

Mr. Justice Black wrote a dissenting opinion in *Groban* and commencing at page 345 thereof, he stated:

> "It is said that a witness can protect himself against some of the many abuses possible in a secret interrogation by asserting the privilege against self-incrimination. But this proposition collapses under anything more than the most superficial consideration. The average witness has little or any idea when or how to raise his constitutional

> privilege. There is no requirement in the Ohio statutes that the fire prevention officers must inform the witness that he is privileged not to incriminate himself and in view of the intricate possibilities of waiver which surround the privilege, he may easily unwittingly waive it. (See Rogers v. United States, 340 U. S. 367.) If the witness is coerced or misled by his interrogators, he may not dare raise the privilege."

Mr. Justice Black's comments, noted above, readily apply to the instant situation. Here, the petitioner as a witness was never apprised by any attorney, for he had none, or by his inquisitioners, of his privilege not to incriminate himself.

Eliciting testimony from the petitioner on the opening day of the hearing held before the Coordinating Committee of the Bar Association on May 17, 1960, attended by the petitioner pursuant to subpoena and without counsel representing him, which bore directly on his guilt or innocence under Section 1202 of the Penal Law of the State of New York, was a violation of petitioner's rights under the Fifth and Fourteenth Amendments to the Federal Constitution. Petitioner, unaided by counsel on the first day of the hearing, and manifestly ignorant of his constitutional right to remain mute and not answer any questions that might tend to incriminate him, should have been advised by his inquisitor of his constitutional right to invoke the privilege against self-incrimination provided in the Fifth Amendment. It was the obligation of the inquisitor, in examining the petitioner who was in danger of incriminating himself, to warn him of the danger and advise him of his constitutional privilege. *Gideon* v. *Wainwright*, 372 U. S. 335 (1963); *United States* v. *Bell*, 81 Fed. 830 (C. C. Tenn. 1897).

4. The testimony elicited from petitioner on May 17, 1960 by the Coordinating Committee of the Bar Association in violation of petitioner's constitutional rights, should not later have been used in evidence against him in the proceedings instituted by the Board of Regents of the State of New York to revoke petitioner's license. *United States* v. *Bell,* 81 Fed. 830 (C. C. Tenn. 1897). One of the grounds relied upon by Mr. Justice Reed in holding in the *Groban* case that there was no constitutional right to insist upon counsel at the investigatory proceeding conducted by the fire marshal, was his view that any abuse in the taking of testimony could be corrected by excluding from subsequent prosecutions evidence improperly obtained (*In re Groban,* at p. 334). Here, the testimony improperly taken from the petitioner at the hearing before the Coordinating Committee of the Bar Association on May 17, 1960 was later read into the record at the hearing held on November 18, 1960 in the proceedings instituted by the respondent against the petitioner to revoke his license to practice medicine, notwithstanding the objection of petitioner's counsel to the introduction of such testimony (R. 49, 64, 66, 67).

Conclusion

It has always been the practice of this Court to resolve the frequent and apparent juxtaposition of individuals and governments by weighing what has variously been called the common weal, public good or public interest against individual right, freedom and liberty.

The implementation and fulfillment of national and international policies have necessitated increased government involvement and even interference with the daily lives of individual citizens. Government action has in-

creasingly taken the form of administrative and investigatory agencies and committees. The authority of these administrative and investigatory bodies often has been broad and far-reaching, and where employed by state governments, their sphere of competence has usually been justified as an extension of a state's "police power" to protect the health, safety and welfare of its citizens.

Under these circumstances, this Court has often been called upon to review the actions of these state governmental bodies, in order to insure that the rights and privileges of citizens, guaranteed by the Constitution shall, at all times, be preserved. When not otherwise specifically provided for under the Constitution, this Court has usually reviewed state action under the due process clause of the Fourteenth Amendment.

The question now put to this Court is whether this petitioner has been deprived of his property without due process of law. In the instant situation, the petitioner was compelled, by subpoena, to appear before a committee whose authority included the disciplining of those who were summoned before it. This petitioner never challenged the authority of the Coordinating Committee, but he did challenge the scope of that authority so far as it applied to him; he challenged the relevancy and pertinency of certain questions propounded to him. How much more can be expected of a non-lawyer? Is it reasonable to expect a person without a legal education to be fully aware of the rights and privileges afforded him by the Constitution? Is it due process of law for a committee of attorneys to studiously and consciously avoid clearly apprising a witness of the extent of their authority and of the relevancy of their questions, and is it due process of law for said committeemen to studiously and

consciously avoid advising a witness, unattended by counsel, of his rights?

The necessity for and propriety of government involvement in our daily lives in this day and age, cannot be disputed, but the worthiness of the goals to be attained by such government action should never be allowed to entirely outweigh any of the fundamental rights, privileges and liberties guaranteed the citizens by the Constitution, which this Court has never failed to protect.

It is respectfully submitted that the foregoing presents a situation which merits the consideration of this Court and the granting of this petition.

Respectfully submitted,

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May 10, 1966.

APPENDIX A

In the Matter of Samuel S. Frank, Petitioner v. Board of Regents of the University of the State of New York, Respondent

Supreme Court, Appellate Division, Third Department

November 18, 1965

Before GIBSON, P.J.; and HERLIHY, REYNOLDS, AULISI and HAMM, JJ.

PER CURIAM.

Proceeding under Article 78 of the Civil Practice Law and Rules to review a determination of the Board of Regents and the order of the Commissioner of Education entered thereon which suspended for one year petitioner's license to practice medicine, upon findings of his guilt of charges of (1) fraud and deceit in the practice of medicine (Education Law, Sec. 6514, subd. 2, par. (a)) in submitting false medical reports and bills to certain attorneys representing clients seeking recoveries for alleged accidental injuries; and of (2) unprofessional conduct in the practice of medicine (Education Law, Sec. 6514, subd. 2, par. (g)) in conspiring with said attorneys to furnish to them false and fraudulent medical reports and bills to support claims for alleged personal injuries.

(1) Contrary to the contention that the evidence was insufficient to establish the charges, the proof of petitioner's guilt was overwhelming. It included the testimony of 10 of the supposed patients and was, indeed, in many respects confirmed by petitioner's testimony pre-

viously adduced in an investigation directed by the Appellate Division, First Department; and, in the proceedings now under review, petitioner neither testified nor produced evidence to contradict that offered against him.

(2) Again contrary to petitioner's contention, no statute imposes a Statute of Limitations applicable to a disciplinary proceeding of this nature; and we perceive no basis for petitioner's additional claim of laches.

(3) The punishment imposed seems to us moderate indeed and certainly was not in any sense shocking.

Determination confirmed, and petition dismissed, without costs.

APPENDIX B

Order of the Appellate Division of the Supreme Court, New York, First Department, Creating and Empowering the Investigating Committee

Pursuant to the provisions of Section 90 of the Judiciary Law and in the exercise of the inherent powers of this court the Justices of the Appellate Division of the Supreme Court in and for the First Judicial Department do hereby

Order a continuous examination and study of the Statements of Retainer and Closing Statements filed with the Appellate Division in the First Judicial Department, pursuant to the applicable rules of this court, for the following purposes: 1. Compilation and interpretation of relevant statistics and data; 2. Observation, consideration and, where necessary, correction of the professional conduct of attorneys and those employed by them or associated with them in any manner whatever in representing either plaintiffs or defendants or their indemnitors, insurers, subrogors, or subrogees in those actions in which such statemnts are required to be filed by the rules of the court; and it is further

Ordered that this examination and study shall continue until further order of this court; that the same be conducted under the supervision of the Presiding Justice of this court by such employees of this court and of the Supreme Court in and for the First Judicial Department as he may designate and by the members of the Co-ordinating Committee on Discipline and such members of the Grievance Committee of the Association of the Bar of the City of New York, the Committee on Discipline of the New York County Lawyers Association

and the Grievance Committee of the Bronx County Bar Association as may be designated and it is further

Ordered that all subpoenas issued by the Clerk of this court in connection with this examination and study be made returnable at the Courthouse of the Appellate Division in and for the First Judicial Department at 25th Street and Madison Avenue, New York, New York, or at the office of the Association of the Bar of the City of New York, the New York County Lawyers Association or the Bronx County Bar Association or such other places as may be designated by the Presiding Justice of this court, and that all examinations and hearings be held at said places or such other places as may be designated by the Presiding Justice of this court, and it is further

Ordered that all pertinent records, papers and documents filed in this court shall be available for the purpose of this examination and study.

Dated: New York, February 3, 1959.

/s/ Bernard Botein
Presiding Justice

/s/ Charles D. Breitel

/s/ Martin M. Frank

/s/ James B. M. McNally

/s/ Francis L. Valente

/s/ Harold A. Stevens